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No. 469

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

COASTAL PETROLEUM COMPANY, a Florida corporation,
Petitioner,

v.

CLAUDE R. KIRK, JR., Governor of the State of Florida; TOM ADAMS, Secretary of State; EARL FAIRCLOTH, Attorney General; FRED O. DICKINSON, JR., State Comptroller; BROWARD WILLIAMS, State Treasurer; FLOYD T. CHRISTIAN, Superintendent of Public Instruction; DOYLE CONNER, Commissioner of Agriculture, as and constituting the TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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INDEX

	Page
Citation to Decision Below	2
Jurisdiction	2
Question Presented	2
Constitutional Provisions Involved	3
Statement of Case	3
How the Constitutional Question Arose	6
Argument	6
Conclusion	12
Appendix:	
Supreme Court of Florida, Opinion Denying Petition for Writ of Certiorari	1a
District Court of Appeal, Opinion	2a
District Court of Appeal, Opinion Denying Rehearing	10a
Circuit Court of the Second Judicial Circuit, Final Decree	13a

TABLE OF CASES

Collins v. Coastal Petroleum Co., 118 So. 2d 796 (Dist. Ct. of App. 1st Dist. 1960), certiorari discharged, 125 So. 2d 300 (Sup. Ct. Fla. 1960)	4
Federal Power Commission v. Natural Gas Pipeline Co., 315 U. S. 575 (1942)	10
Grannis v. Ordean, 234 U. S. 385 (1914)	7
Miller v. Avirom, — U. S. App. D. C. —, — F. 2d — (No. 20,639 decided June 28, 1967)	8
Morley Construction Co. v. Maryland Casualty Co., 300 U. S. 185 (1937)	8
Mullane v. Central Hanover Bank & Trust Co., 339 U. S. 306 (1950)	7
Ohio Bell Telephone Co. v. Public Utilities Comm., 301 U. S. 292 (1937)	8
Ramming Real Estate Co. v. United States, 122 F. 2d 892 (8th Cir. 1941)	8
Watson v. Holland, 20 So. 2d 388 (1944)	4

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioners pray that a Writ of Certiorari issue to review the decision of the District Court of Appeal, First District, State of Florida, entered in the above entitled case on November 15, 1966, rehearing of which was denied on February 7, 1967, and petition for Writ of Certiorari was denied by the Supreme Court of Florida on May 16, 1967.

CITATION TO DECISION BELOW

The decision of the Supreme Court of Florida denying Certiorari is reported at — So.2d —, and is set forth in the appendix, infra, p. 1a. The decision of the District Court of Appeal, First District is reported at 194 So.2d 71, and is set forth in the appendix, infra, p. 2a et seq. The decision of the District Court of Appeal, First District, denying the petition for rehearing is reported at 194 So.2d 75, and is set forth in the appendix, infra, p. 10a, et seq. The decision of the Circuit Court of the Second Judicial Circuit, in and for Leon County (R. 434), is set forth in the appendix, infra, p. 13a et seq.

JURISDICTION

The judgment of the Supreme Court of Florida denying a petition for Writ of Certiorari was entered on May 16, 1967. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257 (3), Petitioners having asserted below and asserting here deprivation of rights secured by the Constitution of the United States.

QUESTION PRESENTED

In a proceeding for a declaratory judgment seeking to establish leasehold rights solely with respect to Lake Hancock, the trial Court found that the pertinent contracts gave Petitioner the mineral rights to Lake Hancock. The District Court of Appeal reversed and ruled that Petitioner not only was not entitled to Lake Hancock, which was the single question before it, but the court further concluded that Petitioner was entitled only to water bottoms of named rivers and lakes.

On these facts, in Petitioner's view the following question is presented:

Was it a deprivation of property without due process of law as guaranteed by the Fourteenth Amendment, for an appellate court to go completely beyond the question tried below and raised on appeal, and confiscate Petitioner's leasehold rights to water bottoms adjacent to named rivers and to all lakes not named in the documents without once affording Petitioner the right to offer evidence and to be heard on these issues?

CONSTITUTIONAL PROVISIONS INVOLVED

1. This case involves the Fourteenth Amendment of the Constitution of the United States.

2. This case involves the following section of the Declaration of Rights of the Constitution of the State of Florida:

> "Section 12. Double Jeopardy; self-incrimination; eminent domain; right to work.—No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property without due process of law; nor shall private property be taken without just compensation. . . ."

STATEMENT OF CASE

Respondents are the successors in office to the parties defendant below. In 1941 Petitioner's predecessor in interest entered into an exploration contract with the Trustees of the Internal Improvement Fund of the State of Florida (R. 8-15). Out of this original exploration contract there evolved, inter alia, Drilling Lease No. 224-B, As Modified, dated February 27, 1947

(R. 37-57). The validity of these contracts was established by the Supreme Court of Florida, en banc, in *Watson* v. *Holland,* 20 So.2d 388 (1944); rehearing denied, January 31, 1945; and Petitioner's rights with respect to certain minerals were determined in *Collins* v. *Coastal Petroleum Co.,* 118 So.2d 796 (Dist. Ct. of App. 1st Dist. 1960), certiorari discharged, 125 So.2d 300 (Sup. Ct. Fla. 1960).

In order to determine if Lake Hancock, a 3500 acre meandered body of sovereign, navigable, inland water in Polk County, Florida, which Lake is the headwater of Peace River, was a water bottom covered by Drilling Lease No. 224-B, as modified, Petitioner, on August 27, 1965, filed a complaint for Declaratory Judgment (R. 1) in the Circuit Court of the Second Judicial Circuit, in and for Leon County (In Chancery, No. 20492). The sole question before the Chancellor, by agreement of the parties and the court[1] and consequently the only matter on which testimony and evidence were offered was, simply, is the bottom of Lake Hancock included within the territorial scope of Drilling No. 224-B, as modified, in which lease the Trustees conveyed to Petitioner, inter alia, "Also the bottoms of *and water bottoms adjacent to* the rivers hereinafter named . . ." (Emphasis added).

The Chancellor, after a full and complete hearing, ruled on December 17, 1965, that: (R. 443; App. p. 23a)

> "1. The bottom of Lake Hancock in Polk County is included within the public bottoms described in Lease No. 224-B, as modified, executed February

[1] See Record, Pages 315, and 391-392 wherein the issue was spelled out during the hearing.

27, 1947, between the Trustees of the Internal Improvement Fund of Florida and Coastal Petroleum Company, a corporation."

The Trustees appealed this decree determining the leasehold rights to the bottom of Lake Hancock, by filing a Notice of Appeal on February 15, 1966. (R. 444). The District Court of Appeal, First District, State of Florida, reversed the Chancellor, and stated: (App. p. 10a)

> "We conclude that the lease documents meant exactly what they said; that is, that the water bottoms covered included only those rivers and lakes named therein. Since Lake Hancock was not named, it was not included; on the contrary, it was specifically excluded by the words, 'Peace River to Township 29/30.'
>
> Reversed."

Thus by one stroke of the pen, the appellate court not only reversed the decree with respect to Lake Hancock, but confiscated from Petitioner lease rights covering vast areas of land by completely excising from the conveyancing language of the lease the phrase "water bottoms adjacent to" the named rivers. The question of lakes, other than Lake Hancock, was not tried in the lower court nor raised on appeal, yet the appellate court concluded that only named lakes were covered by the lease; the question of bottoms adjacent to named rivers was not tried in the lower court nor raised on appeal, yet the appellate court concluded that only the water bottoms of named rivers were included.

HOW THE CONSTITUTIONAL QUESTION AROSE

The Constitutional question of taking property without due process of law arose when the District Court of Appeal ruled with respect to matters not heard in the trial court nor raised on appeal. Petitioner sought then to have that decision reviewed by filing a Petition for Writ of Certiorari with the Supreme Court of Florida, which Petition was denied (App. p. 1a). Consequently, Petitioner has never had a hearing on the question herein raised.

ARGUMENT

This case presents the rather unique situation wherein the claimed denial of due process resulted from the action of the appellate court, not from the action of the trial court. By an obvious misreading of the lease the District Court of Appeal took from Petitioner leasehold rights to land which rights were not before the trial court, thereby depriving Petitioner of property without due process of law. The Supreme Court of Florida in the exercise of its discretion refused to grant a Petition for Writ of Certiorari, so if a grave miscarriage of justice is to be prevented, this Court must now grant the Petition for Writ of Certiorari .

Under Drilling Lease No. 224-B, as modified, between the Trustees of the Internal Improvement Fund of the State of Florida and Petitioner, the Trustees leased to Petitioner, inter alia, (R. 40) "Also the bottoms of and water bottoms adjacent to the rivers hereinafter named . . ." In order to determine whether Lake Hancock was encompassed by this politically con-

troversial lease,[2] Petitioner initiated a declaratory judgment proceeding, which terminated in a finding that the mineral rights to Lake Hancock did belong to Petitioner. No other questions were raised, nor was evidence received on other issues, yet in reversing the decision, the District Court of Appeal, not only concluded that Lake Hancock was not within the purview of the lease, but also went off on a frolic of its own and confiscated (1) all unnamed lakes, and (2) the water bottoms adjacent to the named rivers. Such action seemingly gives truth to the old maxim—"*Aliam perdit qui lege agit de vacca*"—if you go to court about a cow it will cost you another cow.

"The fundamental requisite of due process of law is the opportunity to be heard." *Grannis* v. *Ordean*, 234 U.S. 385. (1914) "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

It is patently obvious that Petitioner was never given an opportunity to be heard on the questions (1) whether or not its drilling lease covered "water bottoms adjacent to" named rivers, and (2) whether or not its lease covered any unnamed lakes other than Lake Hancock. Before the appellate court could take

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[2] See, for instance, the series of three articles in the Fort Myers News-Press, on December 28, 29, & 30, 1966, or Senate Bill No. 658 and its companion, House Bill 1125, which were introduced in the Florida Legislature earlier this year.

back for the State the two potentially vast areas which were clearly given by the lease, the court, at least, should have (1) remanded with instructions to receive additional evidence, or (2) better still, restricted itself to the appeal. As was said in *Ohio Bell Telephone Co.* v. *Public Utilities Comm.*, 301 U.S. 292 (1937), "The fundamentals of a fair trial were denied to the appellant when rates previously collected were ordered to be refunded upon the strength of evidential facts not spread upon the record." In rejecting the argument that the Petitioner did not object, the Court went on to say, "As there was no warning of such a course, so also there was no consent to it. We do not presume acquiescence in the loss of fundamental rights."

This Court made it clear in *Morley Construction Co.* v. *Maryland Casualty Co.*, 300 U.S. 185 (1937) that the appellate court was not at liberty to substitute a new form of relief for that granted by the trial court. And in *Ramming Real Estate Co.* v. *United States*, 122 F.2d 892 (8th Cir. 1941) the court noted, "The general rule, subject to certain exceptions not here material, is that the appellate court will consider only such questions as were raised and preserved in the lower court."

"In our jurisprudential system, trial and appellate processes are synchronized in contemplation that review will normally be confined to matters appropriately submitted for determination in the court of first resort." This statement was recently made by the U. S. Court of Appeals for the District of Columbia in refusing to pass on an issue raised for the first time in the appellate court. *Miller* v. *Avirom*, — U.S. App. D.C. —, — F.2d — (No. 20,639 decided June 28,

1967). In a footnote to the above statement the court further admitted: "We lack original jurisdiction and are not equipped to handle trial functions. Thus our review is necessarily conducted on the record made in the trial court, with the benefit of its consideration of the problems." By itself raising issues and then ruling on them, the District Court of Appeal in Florida committed most egregious error.

Petitioner has been conducting its operations in the area involved under Drilling Lease No. 224-B, as modified, since shortly after the lease was executed more than twenty years ago. It was never doubted that the lease's perspicuous language "the bottoms of and water bottoms adjacent to the rivers hereinafter named . . ." included the myriad lakes, ponds, marshes and bogs in the immediate vicinity of each named river. Pretermitting the question of whether Lake Hancock is included as being a water bottom adjacent to Peace River (the only question tried below), the Court's attention is invited to the U. S. Geological Survey map in the back of this Petition. This map, selected at random to illustrate the gravamen of our argument, shows a portion of Peace River, a river named in the lease. The map is submitted as a graphic demonstration of the denouement of the decision below which held "that the water bottoms covered included only those rivers and lakes named" in the lease, while ignoring the exact wording of the lease, "the bottoms of and water bottoms adjacent to the rivers hereinafter named . . ." Applying this language to the enclosed map, or to any other map of many such areas encompassed within this lease, the devastating and improbable effect becomes readily apparent. For instance, English Lake, located at the top of the map, which is within 400 feet

of Peace River, would apparently be excluded since it is not a lake named in the lease. Handcock Lake, located above English Lake at the top of this map (distinguished from the large Lake Hancock about which the trial was concerned) actually is contiguous to Peace River but again is not named in the lease, and therefore, would apparently be excluded from the area covered by the lease. Are the leased areas so ephemeral that the mere acts of giving the euphemism "Lake" to a small body of water which was formerly a part of Peace River, and then giving such lake a name, thereby remove such areas from the water bottoms conveyed by the Lease? When the appellate court below read out of the Lease "water bottoms adjacent to rivers" named, it effectively confiscated the lease rights to thousands of acres of water bottoms—without Petitioner having had notice and an opportunity to be heard as to such a reclaim from the Lease. Clearly confiscation is violative of the Constitution. *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 589 (1942). Thus Petitioner has lost all "Lakes" no matter how small or how close to the named rivers, and has lost all of the water bottoms as yet unnamed, which are adjacent to these rivers—all without ever having its day in court on these issues. The exclusion of Petitioner from these areas by the Trustees' arrant dixit could not have been a more flagrant violation of Petitioner's right to due process than is the appellate court's action. Lease rights to vast areas of valuable or potentially valuable oil, gas, and mineral deposits are involved, and they must not be confiscated unless and except by orderly judicial process.

In its opinion reversing the Circuit Court, the District Court of Appeal discusses various terms in the

lease, such as "water bottoms adjacent to." However, the opinion is less than clear, even considering the opinion on the petition for rehearing which the court issued, in its words, "For the sake of clarity . . ." Nonetheless, the opinion, in the final paragraph, clearly continues to state:

> "We conclude that the lease documents meant exactly what they said; that is, that the water bottoms covered included only those rivers and lakes named therein. Since Lake Hancock was not named, it was not included; on the contrary, it was specifically excluded by the words, 'Peace River to Township 29/30.'
>
> REVERSED"

Whatever confusion may exist concerning the court's opinion, it appears to us clear, for this case and for all future cases involving these lease documents, which cover more than 4.5 million acres of land and thereby comprise the largest lease in the United States, that "the water bottoms covered included only those rivers and lakes named therein." Any court in the future will be forced to apply this conclusion, and to exclude unnamed lakes and water bottoms adjacent to named rivers, despite the fact that the lease in question specifically provided that Petitioner was entitled to all water bottoms adjacent to the named rivers as well as the bottoms of the named rivers themselves. If these vast areas can be confiscated without any semblance of due process, then Petitioner is left with no recourse whatsoever unless this honorable Court will see fit to accord to Petitioner the relief it deserves.

CONCLUSION

WHEREFORE, petitioner prays that the petition for writ of certiorari be granted and the judgment below be reversed or modified.

Respectfully submitted,

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